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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. [redacted]140

THE ELECTRIC AUTO-LITE COMPANY
and
LOCAL 12, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,
Petitioners,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Local 12, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, Petitioner, herein prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above captioned case on April 17, 1952, granting enforcement of an order of the National Labor Relations Board in this matter.

OPINIONS BELOW

The Decision and Order of the National Labor Relations Board (R. 67) is reported in 92 N. L. R. B. 1073. The judgment of the Court of Appeals appears at R. 281.

JURISDICTION

The judgment of the Court of Appeals was entered on April 17, 1952. On May 13, 1952 an order denying a petition for rehearing was entered. The jurisdiction of the Court is invoked under 29 U. S. C. A. 160(e) and 28 U. S. C. A. 1254.

QUESTIONS PRESENTED

1. May an employee be discharged under a valid union security clause if such employee does not pay to the union an obligation imposed upon all members of the union who do not attend a regular monthly union meeting?

2. In the event the dues of a union are increased by 50 cents a month for each member with the provision that a member who attends a regular monthly meeting will be exonerated from the payment of such increase, may a member be discharged under a valid union security clause if he does not attend the regular monthly meeting and refuses or fails to pay the fifty cents dues increase?

3. In the event a union member is delinquent in the payment of obligations taxed against him for his non-attendance at a regular monthly union meeting and in the event

his unspecified check-off is applied to the payment of such obligations with the result that he is delinquent in the payment of dues which are conceded to be periodic dues as contemplated under 29 U. S. C. A. 158(a)(3), may he be discharged under a valid union security clause?

4. Is an amalgamated local union chargeable for the acts of its component autonomous units?

5. Where the only action taken by a union is a written request for discharge of an employee in conformity with a valid union security clause, is such action protected by Section 8(c) of the Labor Management Relations Act of 1947, 29 U. S. C. A. 158(c)?

STATUTES INVOLVED

Pertinent provisions of the Labor Management Relations Act of 1947 are as follows:

> "* * * *Provided further*, that no employer shall justify any discrimination against an employee for non-membership in a labor organization * * * (B) if he has reasonable grounds for believing that such membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;" 29 U. S. C. A. 158 (a)(3).
>
> "It shall be an unfair labor practice for a labor organization or its agents—* * * to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his

failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;" 29 U. S. C. A. 158 (b) (2).

"(C) The expressing of any views, arguments, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit." 29 U. S. C. A. 158 (c).

STATEMENT OF CASE

The Electric Auto-Lite Company shall hereinafter be referred to as the "Company".

Local 12, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, is hereinafter referred to as the "Union".

The Auto-Lite Unit of Local 12, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, is hereinafter referred to as the "Unit."

The Labor Management Relations Act of 1947 is hereinafter referred to as the "Act".

The International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (CIO) is hereinafter referred to as the "International Union".

The dues imposed by the constitution of the International Union are hereinafter referred to as "$1.50 monthly dues".

The amount of 50¢ which was imposed by the unit is hereinafter referred to as "50¢ monthly dues". (In choosing such nomenclature we are not unmindful of the General Counsel's statements in his brief filed in the court below: "No argument is necessary to show that the character of anything is not necessarily established by its label.")

Since 1938 the Unit has been the certified bargaining representative of the employees in the Company's plant, 10 N. L. R. B. 66. Since 1942, there has been a valid maintenance of membership clause in the collective bargaining agreement which provides that all employees who are members of the union in good standing

> "shall, as a condition of employment remain members of the union in good standing as provided in the Constitution and By-Laws of the Union" (147-148).

About September, 1946 the membership of the unit at a regular meeting adopted a motion increasing the monthly dues of all members from $1.50 to $2.00 and exonerating members who attended the monthly meetings from the payment of the additional 50 cents (R. 38, 166, 167, 181, 182, 183).

> "The motion was that the individual pay $2.00 instead of the $1.50 * * *" (R. 183).

Each member was charged with such amount by the financial secretary of the Union (R. 202). In the event a member attended at the Unit meeting, upon the presentation of an attendance card he was exonerated from the payment of "50¢ monthly dues" (R. 166, 167, 202). The purpose of the motion was to encourage attendance at union meetings (R. 191) and thus to encourage democratic participation of members in union activities.

Eck, a member of the Union and an employee of the Company, failed to attend at least three meetings (R. 209) and did not receive exoneration of his "50¢ monthly dues" (R. 202).

> "Q. This sheet of paper states that March, 1948 deduction was applied to January, February and March meeting assessments?
> A. That's right.
> Q. Putting him one month behind in dues, is that correct?
> A. That's right."

Some of the employees who did not pay dues by check-off paid the "50¢ monthly dues" prior to the date of meetings (R. 199).

Eck knew that his check-off was applied to the "50¢ monthly dues" by reason of past custom and because he had received a notification (R. 114). In addition, he was sent a registered letter by the Company advising him of the fact that he was subject to discharge for dues delinquency. Eck being in arrears in his dues, in accordance with the Constitution of the International Union and the By-Laws of the Unit, was suspended from membership on December 1, 1948 and the Company, following notification by the Union, discharged him under the maintenance of membership clause of the contract (R. 233).

The Unit is an autonomous labor organization for which the Union keeps the financial records (R. 163).

The International Constitution of the Union provides (R. 84):

> "Where local unions deem it necessary they may exonerate certain members from payment of dues to the union. However, such members, with the excep-

tion of those holding gratuitous life memberships, shall be considered as dues paying members and per capita tax shall be paid for such members."

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

1. The Court of Appeals in enforcing the Board's Order has decided an important and substantial federal question which has not been but should be settled by this Court.

2. The enforcement of the Board's Order draws into issue for the first time the interpretation by this Court of Sections 8(a)(3) and 8(b)(2) of the Act in respect to the meaning of periodic dues, uniformly required as a condition of retaining membership in the union.

3. The enforcement of the Board's Order leaves the law in a state of uncertainty as to whether labor unions may determine the dues to be assessed against its members or whether such determination lies solely within the exclusive jurisdiction of the Board under Sections 8(a)(3) and 8(b)(2). A determination of this question will settle this extremely important point of law and remove the uncertainty that now prevails.

4. In view of the statement of the dissenting member of the Board, as follows:

> "In fact, my colleagues concede that a proper increase in dues on the part of the union and the granting of rebate to members who attend meetings would serve as a valid defense to the discharge" (R. 84, 85).

there is uncertainty and doubt as to the procedure which unions must follow to legally impose obligations on their membership for non-attendance at union meetings.

5. In Appendix A of the General Counsel's brief filed in the Court below, 94 labor organizations were listed whose constitutions or by-laws contain express provisions dealing with non-attendance at union meetings. In addition to these unions there are many other thousands of workers in the nation who are covered by similar provisions and whose status is in doubt by reason of the Board's decision. In order that the unions' right to use a union security clause for the purpose of obtaining a discharge for the failure of an employee to attend a union meeting may be determined, an authoritative decision of this Court is required.

6. The action of the Court of Appeals leaves doubt and uncertainty as to the extent to which the Board may interfere with the internal affairs of a union organization; i. e., the right of a union to determine what are union dues and the right of a union to determine what monies paid by a union's membership through a check-off may be applied to obligations other than those held to be periodic dues under sections 8(a)(3) and 8(b)(2).

7. Since there is an apparent conflict between the Department of Justice's interpretation of Section 320(c)(4) of the Act with respect to the "check-off of membership dues in a labor organization" and the interpretation placed by the Board in this case upon similar language in Sections 8(a)(3) and 8(b)(2), this conflict should be resolved by this Court.

I.

IT WAS NOT THE INTENT OF CONGRESS TO DENY THE RIGHT TO DISCHARGE AN EMPLOYEE UNDER A VALID UNION SECURITY CLAUSE BECAUSE OF THE NON-PAYMENT OF AN OBLIGATION IMPOSED FOR NON-ATTENDANCE AT A UNION MEETING.

Congress in the Act restricted the definition of dues only to the extent that they must be "periodic" and "uniformly required". The non-payment of any charge against a member whether it be called assessment, meeting fine or "50¢ monthly dues" may therefore subject a member to discharge if the due is "periodic" and "uniformly required."

The Act as enacted by Congress does not deny the right of a union to encourage attendance at union meetings under the circumstances in the instant case. Not only does the action taken by the Union in the instant case satisfy the requirements of Section 8(a)(3), but it is indeed significant that Section 8(a)(3) does not refer to fines or assessments but only to dues which are defined as being "periodic dues • • • uniformly required as a condition of acquiring or retaining membership."

The legislative history of the union security provisions of the Labor Management Relations Act, as amended in 1947, unmistakably shows that what Congress desired to do was to prevent the discriminatory application of union security clauses against employees "for capricious reasons" (Senate Report No. 105 on S. 1126, Legislative History, hereinafter referred to as "Leg. H." of the Act, Vol. 1, page 409). The intention of Congress was that "Unions may not cause the discharge of employees by *discriminat-*

ing against them" (italics ours). (House Report No. 245, Leg. H. p. 300.) This Congressional purpose was also expressed as "a protection of the individual worker against *arbitrary* action by a Union" (italics ours). (House Conference Report No. 510, Leg. H. p. 545.)

Union Starch and Refining Company v. N. L. R. B., 186 F. 2d 1008, cited by the General Counsel below, supports this view upon which premise the case was decided.

The Senate Report emphasized that the provisions were designed to prevent the use of a closed shop as a method of coercing employees for improper purposes and of making them conform to the wishes or policies of union officials. The illustrations in the testimony calling for restrictions upon union security contracts all relate to discriminatory discharges of individual members.

Senator Taft said (Senate 5/9/47 p. 5087):

> "• • • That provision takes care of *arbitrary rules* on the part of unions. It takes care of cases similar to one in New York in which ten men were fired because the union made a rule that it would not permit anyone to continue in membership unless he was the son of a man already working in that plant and a member of that union."
>
> "There are also many abuses in connection with the firing of men. We further provide in the bill that if a man is fired by the union for some reason other than non-payment of dues the employer does not have to discharge him. The abuse at which that provision is aimed is the *usual type of abuse*, and *is the only type of abuse testified to* • • •."
>
> "We had testimony regarding the case of a union member who saw a shop steward knock down a foreman. • • • He testified truthfully • • • the union

discharged him from union membership, and the employer had to discharge him * * *."

"In a case of that sort, the committee bill provides that the employer does not have to fire the employee. The union can discharge him from union membership if it wishes to do so, but the employer does not have to discharge him from employment." (Italics ours.)

We fail to find in the legislative history anything which would indicate that the action taken by the union in the instant case comes within the classification of "an abuse". Although unions for many years have imposed obligations for non-attendance at union meetings, nevertheless in none of the Congressional discussions was there any mention made that such action was reprehensible and that it was a type of abuse which Congress sought to eliminate. Nor did the General Counsel in the Court below point to any abuse considered by Congress to be comparable to the action taken by the unit in this case. Nor was it named as "the usual type of abuse" by Senator Taft. By enacting 8 (a) (3) and 8 (b) (2) Congress did not intend to strike down as "arbitrary" the attempt on the part of a union to encourage democratic participation in its affairs. Had the matter been brought to Congress's attention it would have no doubt agreed with the Board (R. 72): "Moreover, we do not doubt that a member's attendance at a union meeting is highly desirable and salutary to carry out the democratic process."

The union security device was, however, expressly sanctioned to permit "employers and unions who feel that such agreements promoted stability by eliminating 'free riders' the right to continue such arrangements". (Sen. Rep. 105, Leg. H. p. 413.) It was accordingly provided that a member who did not meet the uniformly required finan-

cial obligations to the Union could be deprived of his membership and of his employment since the non-payment of such obligations would make such a member a "free rider". *To carry out its intent Congress defined dues so as to prevent discrimination and capricious action, and at the same time limited the restriction upon the use of union security clauses so as to permit the elimination of "free riders" by democratic methods.* Therefore, the statutory definition of dues is in terms of being "periodic" and "uniformly required". If each union member were subject to the same financial requirements there could be no discriminatory treatment and financial obligations to the union could not become a device for achieving capricious discharge by indirect means.

Congress made no effort to dictate to unions what might properly constitute the financial obligation of its members to the union. Congress at many points indicated that it did not intend to interfere with the internal conduct of unions provided that discriminatory devices were not used to cause loss of employment and provided that there was uniform treatment of union members as to their financial obligations to the union in cases where union security clauses are involved. *Certainly, the Congress which passed the 1947 Act had no intention to prevent a union from continuing or adopting non-discriminatory devices designed to promote democratic control of union affairs by encouraging the participation of the maximum number of members in union meetings.*

There is not a suggestion in the legislative history to which the General Counsel refers in his brief filed in the court below or in any part of the reports or debates, that Congress intended to outlaw practices which would have the effect of achieving the objective of placing union

action upon a democratic basis by insuring that all members participate in the making of decisions.

The General Counsel has pointed to no consideration which indicates even the possibility of discriminatory use of the dues provision nor does he suggest how this provision in any way defeats or interferes with the attainment of the Congressional purpose. Certainly, there is nothing in the record to show that it was discriminatorily applied to Eck.

Nor may it be assumed without basis that because the check-off card provides for the check-off of $1.50 in dues there was no greater dues obligation.

The Board has ignored the definition of dues in Article 16, Section 1 of the Union Constitution which reads as follows (R. 276):

> "Membership dues shall include the following financial obligations due and owing by a member or applicant for membership:
>
> (a) Initiation or reinstatement fees, as the case may be.
>
> (b) Monthly fees (hereinafter referred to "dues" or "monthly dues").
>
> (c) Special fees (hereinafter referred to as "assessments") levied by the International Union or any of its subordinate bodies in accordance with the provisions of this International Constitution."

In Section 8 (b) (1), it is written:

> "• • • That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; • • •."

Here Congress has indicated that it is not the Board's function to interfere with the internal affairs of a labor organization as it has done in the instant case. We would ask this Court to settle these points:

1. That the denial of a union's right to apply a check-off to the payment of a member's obligations is an interference with the right of a union to prescribe its own rules.

2. That the Board's holding that an increase in monthly dues as herein described is a fine, is an interference with the right of a labor union to prescribe its own rules and determine what shall be considered its dues.

The Board's interpretation of 8 (a) (3) and 8 (b) (2) would frustrate the basic purpose of the statutory provision, since it would make illegal a healthy means of assuring democratic control of union affairs.

Even, however, if we were to accept the view of the language should receive a literal interpretation, no matter how unreasonable, there would still be no basis for the Board's conclusions. The language of 8 (b) (2) involves three elements:

1. Periodic dues.
2. Uniformity.
3. Payments which are required as a condition of retaining membership.

All these conditions were met by the unit in this case.

1. It may not be disputed that the requirements for the payment of $2.00 was periodic—the sum was payable each

month. Two dollars was what was "due" from the member. It was "membership dues" under the Union's constitution and there is no other document or law which determines what dues in the Union are.

2. The requirement was certainly uniform. Everybody was required to pay the $2.00 under like circumstances. The exoneration of 50 cents for attendance at meetings was also uniform. Everybody who attended a meeting got the 50 cents credit.

3. There could be no question that the sum was required as a condition of retaining membership. In fact the entire gravamen of the complaint is that membership was lost for non-payment.

If Congress intended to exclude the "50¢ monthly dues" imposed by the unit from the meaning of "dues" it would have done so specifically. *It is significant that "dues" as used in the Act is in the plural, thus, the Act contemplates more than one "periodic due".* In fact, it is much more logical to assume that if Congress intended to write a provision in conflict with the purposes given for its enactment, it would have been careful to spell out by precise language what would never occur to the reader of the statutes. It is to be noted that where Congress intended to impose a limitation on the *extent* of the financial obligation of a member to his union it has expressly done so. Sec. 8 (b) (5). In short Congress has nowhere suggested that periodic dues may not include a uniform reward, compensation or discount for those who attend a Union's meetings and participate in its deliberations. Indeed it may be said that "free riders" include not only those who attempt to obtain the benefits of union organization by failing to contribute their pro rata share of the cost, but those who seek

to get the benefits of the organization without assuming the responsibilities of membership and the responsibility of participating in the decisions.

In a similar problem presented under Sec. 302 (c) (4) of the Act with respect to the check-off "of membership dues in a labor organization", the Department of Justice ruled that membership dues included initiation fees and assessments. A like interpretation was announced by Senator Taft shortly after the law was passed. (See Hearings before the Joint Committee on the Economic Report, 80th Congress, 1st Session, p. 467). It would be hard to explain why Congress would permit the check-off of the 50 cents here in dispute as part of "membership dues" and intend to exclude it for the purposes of Section 8 (a) (3) and 8 (b) (2).

It is respectfully submitted that the Board's conclusion has no support in the legislative history, the purpose, or the language of the statute. It thwarts the sound democratic policy of financial encouragement to attend union meetings. It defeats earnest efforts to insure democratic control of union affairs. It injects arbitrary administrative control of internal union management. The decision of the Board is as unwise as it is wrong as a matter of law.

II.

SINCE ECK'S CHECK OFF MONIES WERE APPLIED TO LAWFUL OBLIGATIONS WHICH HE OWED THE UNION AT THE TIME OF HIS DISCHARGE HE WAS DELINQUENT IN THE PAYMENT OF "PERIODIC DUES • • • UNIFORMLY REQUIRED AS A CONDITION OF • • • RETAINING MEMBERSHIP" IN THE UNION AND HIS DISCHARGE WAS NOT IN VIOLATION OF LAW.

As indicated from the record quoted above, since Eck's check-off monies were applied to the 50¢ monthly dues he was delinquent in the payment of the $1.50 monthly dues imposed by the International Union. All parties apparently are in agreement that the $1.50 monthly dues are "periodic dues • • • uniformly required as a condition of • • • retaining membership" in the union. *If the union was permitted to apply the check-off to the payment of the 50¢ monthly dues then Eck was lawfully discharged.* We maintain that such procedure was not proscribed, for the following reasons:

1. The Act does not prohibit the union from making such application of the check-off; in fact the Department of Justice has ruled in regard to Sec. 302 (c) (4) of the act with respect to the check-off "of membership dues in a labor organization" that membership dues include initiation fees and assessments.

2. Eck was informed by the union that such application was being made of the check-off (R. 107, 114). "Well, according to the card it said 'checking the record they were going to take $1.50 union dues and pay the union fine which I owed for the meetings.'"

3. Eck in response to notification had appeared on two previous occasions for the purpose of paying a like delinquency and thus had knowledge of the union's practice (R. 114). "A. They always sent me a card. Q. What would you do when you got the card? A. I took it down and paid it."

4. In Eck's check-off authorization there was no limitation as to what the $1.50 should be applied and although Eck had knowledge that it was being applied to the 50¢ monthly dues, he did not advise the union to cease so applying it (R. 121).

5. The constitution provided for such application (Art. 16, Section 9,) (R. 277) by which provision Eck was bound. *24 O. Jur.* 631, Sec. 19.

6. Eck acquisced to the procedure by maintaining his membership in the union and by responding to the procedure on prior occasions (R. 121). "They have been doing it. I know that."

7. The record is clear that Eck did not protest the union's action nor did he revoke his check-off authorization as was his right at any time. (See check-off authorization, R. 234.)

8. The action of the unit in adding 50¢ to the dues is not proscribed by the constitution of the International Union.

9. The action of the unit accomplishes *only* what could have been accomplished simply by passing a resolution increasing the monthly dues to $2.00 or more, collecting the amount and later paying each member 50¢ if he attended the membership meeting.

It is clear that the observations made by the dissenting member are reasonable in the light of the Congressional intent and the practices of labor unions.

> "In fact, my colleagues concede that a proper increase in dues on the part of the Union and the granting of rebate to members who attend meetings, would serve as a valid defense to the discharge. This being so, it appears that the only thing the majority decision accomplishes is to require the Union to undergo the needless burden and expense of installing and maintaining a detailed bookkeeping system and engaging in innumerable cash transactions. Thus, by collecting the $2.00 before the monthly meetings and then returning the 50 cents to those who attend the meeting, the Union would perhaps have made its purpose clearer but the result would be the same as it is now in effect" (R. 84, 85).

There is no doubt that dues were unpaid. The question is whether the check-off was lawfully applied.

III.

THE RESPONDENT UNION, LOCAL 12, WHICH IS CHARGED WITH THE UNFAIR LABOR PRACTICES DID NOT PARTICIPATE IN THE ALLEGED WRONGFUL ACTS SET OUT IN THE COMPLAINT.

It is clear from the evidence that Local 12 is an amalgamated union. See its by-laws, G. C. Ex. No. 11, and the Constitution, G. C. Ex. 13. On the other hand the Auto-Lite Unit is a distinct labor organization with its own constitution and its own separate funds. At page 163 of the Record, John Begg, Chairman of the Auto-Lite Unit states:

> "We are a completely autonomous unit, there is no question about that, as far as contract procedure,

> negotiating of contracts, policing of contracts, negotiating of grievances, meetings. We have our own financial set up in a sense. We have our own officers. We even have a treasurer."

At page 188 of the Record, Mr. Begg testified as follows in regard to Financial Secretary Randolph Gray's connection with the Maintenance of Membership clause of the contract:

> "Mr. Goerlich: He'd be acting for the unit, is that right?
> The Witness: That's correct."

At page 190 the following question was put to Mr. Begg:

> "Mr. Begg, does the Union have the power and authority to reject applicants for membership in the unit?
> A. Yes."

The Record is clear that the unit contracts with the company in its own name without the intervention of any of the officers of Local 12. The contract, G. C. Ex. 2, indicates that it is signed by the company and the executive shop committees of the unit. No names of representatives of Local 12 appear on the contract. (The unit (not the union) and the company worked out the manner of giving notice of dues delinquency to the company's employees (R. 195).

It appears therefore that the respondent union, Local 12, cannot be the offending union. Its only connection with the alleged unfair labor practice is the fact that its financial secretary *on behalf of the unit* advised the company of the true status of Employee Eck's membership in the unit. Gray was not acting as an agent for Local 12 but was acting

as an agent for the unit. He was acting in a ministerial capacity only and for the unit. Thus for the purpose of this action the unit must be considered to come under the definition of a labor organization as set out under Section 2(5) of the Act. *N. L. R. B. v. Highland Park Mfg. Co.*, 341 U. S. 322.

IV.

THE LETTER OF JANUARY 12 ADDRESSED TO THE COMPANY UPON WHICH THE UNFAIR LABOR PRACTICE CHARGE WAS PREDICATED IS PROTECTED UNDER SECTION 8 (c) OF THE ACT.

The letter of January 12 (R. 226) upon which is hung the charge of unfair labor practices discloses that the company was simply advised that Melvin Eck was delinquent in the payment of his dues. The testimony of Randolph Gray and Melvin Eck affirms this fact. We submit that such action on the part of Gray was protected by Section 8 (c) of the Act.

> "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

The information given the Company contained no threat of reprisal or force or promise of benefit. There is nothing in the letter of January 12, nor is there any evidence in the record which would indicate that the union coerced or attempted to coerce the company to discriminate against Eck. The union simply stated a truth, that is, Eck was delinquent in the payment of his dues. Nor did the union advise the

company that Eck was delinquent in the payment of "periodic dues". Thus if it is held that Eck was dismissed for reasons other than the non-payment of periodic dues the letter of the union must have put the company on notice as to the non-periodic nature of the dues owing. Moreover, the company at all times was free to act as it chose. It must be concluded therefore that the dismissal of Eck was through no coercion on the part of the union but resulted wholly from the company's appraisal of the truthful information given to it by the union, as the company applied it to the contract.

The act of discharge was finally accomplished by the company free from any threat of force or threat of reprisal by the union. The company at all times was free to refuse to discharge Eck or could have demanded further details of his dues delinquency. In fact the decision of the Board imposes upon the company a duty to investigate Eck's dues delinquency before a discharge is made.

CONCLUSION

The Board's decision deprives the unions of the nation of an effective means whereby they can encourage attendance of members at union meetings. As pointed out above, the Board's decision is not borne out by the legislative history of the Act nor is it in conformity with the statement of policy of the Act, Sec. 1(b) where it is stated:

> "It is the purpose and policy of this Act, * * * to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce * * *."

What better way could the rights of an individual employee in his relations with a labor organization be protected than to afford a means whereby a maximum participation is insured for each individual member.

We call attention to the fact that the Act does not deny the right of a union to encourage attendance at union meetings under the circumstances in the instant case. It is equally clear that the action by the union in the instant case satisfies the definition of dues as set forth in Section 8 (a) (3). It is indeed significant that Section 8 (a) (3) does not refer to fines or assessments but only to dues which are defined as being "periodic dues * * * uniformly required as a condition of acquiring or retaining membership". So long as any of the obligations imposed on a union member by a union are periodic and uniformly required as a condition of retaining membership, they come within the statutory definition and are not proscribed.

Had Congress intended to deny the right of a union to encourage democracy within its membership, it would have indeed been explicit. In fact, Congress has provided in

Section 9 the mechanics for determining a representative for the purpose of collective bargaining based upon majority preference by employees. Likewise, in Section 9 (e) of the Act, Congress has provided protection against a minority entering into a union security agreement. It therefore would appear to be *contra* to the objectives of Congress to deny the union the implement used in the instant case to encourage democratic participation in union meetings and insure majority representation in the union.

As the decision of the Board now stands the action of the union herein is in violation of the Act.

Encouragement of attendance at union meetings produces the following results:

1. It prevents control by a small minority.
2. It encourages democratic participation in labor union affairs.
3. It is an assurance that union policy will reflect the will of the majority.

For our conclusion we find no better expression than that drawn by the Board (R. 72):

> "Moreover we do not doubt that a member's attendance at a union meeting is highly desirable and salutary to carry out the democratic process."

Had the Board and Court of Appeals given adequate weight to this proposition in the light of the legislative history it would have dismissed the Complaint brought by the General Counsel.

We urge that the Board be required to return to the unions of America that which Congress had no intention of

taking away, a means whereby "democratic process" may be fulfilled within a labor union. As the decision of the Board now stands, unions may well end up with no participating members but only dues payers.

Wherefore, your petitioner prays that a writ of certiorari issue to review the decision of the Court of Appeals for the Sixth Circuit in this action.

Respectfully submitted,

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